IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8583 OF 2004

Kum. Dnyanda Arun Bhoir .. Petitioner

V/s

State of Maharashtra & Ors. .. Respondents

Mr.R.K. Mendadkar with Mrs. Helen Koli-Mandlik for the Petitioner.

Mr.R.D. Rane, Additional Government Pleader, for Respondents Nos.1 to 3.

Respondent No.4 is served.

CORAM : H.L. GOKHALE &
S.P. KUKDAY, JJ.

DATE : 10TH JUNE 2005

P.C. :

1. Rule. Rule is returnable forthwith.

2. Heard Mr.Mendadkar for the Petitioner and Mr.Rane, Additional Government Pleader, for Respondents Nos.1 to 3.

3. The Petitioner is a girl student studying in the two years D.Ed. Course run by Respondent No.4 college. The Petitioner obtained admission to this course on the basis that she belongs to Scheduled Tribe (Dongar Koli). The claim of the Petitioner was sent for scrutiny to the Respondent Committee and the Committee had passed an order of invalidation on 30th April 2004 which is challenged in the present petition.

4. Mr.Mendadkar, learned counsel for the Petitioner, points out that though the Committee has gone on the basis of the school entries of the Petitioner's great grand father and grand father recorded on 7th August 1908 and 25th November 1911, there are other documents in support. Thus, there is a school leaving certificate of the brother of great grand father (Gopal Shiva Bhoir) which shows that his caste was recorded as Dongar Koli. Then there is also a school leaving certificate of the cousin of the Petitioner's grand father (Krishna Vithoba Bhoir) which records his caste as Dongar Koli. Both of them left their school in the year 1921 and 1932 as per the certificates. There is also a certificate of another cousin of the grand father of the Petitioner who left the school on 16th September 1935 and which records his caste as Dongar Koli. Mr.Mendadkar has drawn our attention to the genealogy and also to para 2 of the reply wherein the relationship is not specifically disputed. He therefore submitted that the documents ought to have been considered. He has also drawn our attention to the order passed by the Division Bench in Writ Petition No.8187 of 2004 in the case of R.K. Bhoir (the son of above referred Krishna Vithoba Bhoir) whose claim for Dongar Koli @ Mahadev Koli came to be allowed

by the Division Bench by its judgment and order dated 24th November 2004. He therefore submits that the Petitioner also deserves to be treated similarly.

5. Mr.Rane, learned Additional Government Pleader for Respondents Nos.1 to 3, on the other hand, submitted that the Committee has gone on the basis of the oldest documents which were of the year 1908 and 1911 and the Committee should be faulted for that.

6. We have considered the rival submissions. It is undoubtedly true that there are entries of 1908 and 1911 which show the caste of the great grand father and grand father of the Petitioner as merely Koli and not Mahadev Koli. At the same time, we cannot ignore that there are certificates of the cousin of the grand father who left their schools in the year 1921, 1932 and 1935 and who had joined the schools in 1915, 1928 and 1934 respectively which all record that their caste is Dongar Koli. No doubt, the oldest documents support what the Committee has recorded, but there was no reason for anybody to record the caste of the Petitioner's forefathers as Dongar Koli way back in the years 1915, 1928 and 1934 when they joined the schools. In those days, there was no such awareness about the community and the sub-caste and it is quite possible that may be

earlier the caste was entered as Koli, but subsequently the same has been entered as Dongar Koli or Mahadev Koli. Therefore, the oldest documents cannot be used to negative the claim of the Petitioner.

7. That apart, another Division Bench has entertained the claim of R.K. Bhoir, a distant relative as per the genealogy, and wherein there is a comment on the other relatives whose claims have been entertained by the Scrutiny Committee.

8. In the circumstances, in our view, the Petitioner deserves to get the benefit. The decision of the Committee will have to be therefore interfered which we hereby interfere. The order passed by the Scrutiny Committee will stand set aside and the caste certificate issued to the Petitioner will stand validated.

9. Rule is made absolute in terms of prayers (a) and (b). There will be no order as to costs.

10. Respondent No.4 will regularise the admission of the Petitioner within 8 weeks from the date of receipt of a certified copy of this order.

(H.L. GOKHALE, J.)

(S.P. KUKDAY, J.)